

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILMER B. GAY,  
Plaintiff

v.

ROBERT D. SHANNON; VINCENT  
MOONEY; MARY CANINO; JEFFREY  
A. BEARD; THOMAS L. JAMES;  
ROBERT S. BITNER; McCUSKER;  
DERRICK WADE; DONALD T. VAUGHN;  
WILLIAM FULMER; BERNIE CUDWODIE;  
ANTHONY L. PETRUCCIA; EDGAR M.  
KNEISS; CAROL M. DOTTER;  
SGT. MEYERS; LT. BRENNAN  
Defendants

CIVIL ACTION

NO. 02-4693

Order

And now, this 1<sup>st</sup> day of March, 2005, upon consideration of the motion of defendants Jeffrey A. Beard, Thomas L. James, Robert S. Bitner, Donald T. Vaughn, William Fulmer, Robert D. Shannon, Anthony L. Petruccia, Edgar M. Kneiss, Mary Canino, Lt. Brennan, Vincent Mooney, Derrick Wade, Sergeant Meyers, Corrections Officer McCusker, Carol M. Dotter and Bernard Cudwodie to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Civil Procedure 12(b)(1), and the response of plaintiff Wilmer B. Gay thereto, it is **ORDERED** that:

1. Defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(1) is **GRANTED** as to all defendants in their official capacity as they are immune from suit under the 11<sup>th</sup> Amendment of the United States Constitution.

2. Defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) is **GRANTED** in part and **DENIED** in part:

a. Plaintiff's claims under the Eighth Amendment are **DISMISSED** for failure to state a claim.

b. Plaintiff's claims under the Fourteenth Amendment are **DISMISSED** for failure to state a claim.

c. Plaintiff's claims under Title 42 U.S.C. § 1986 are **DISMISSED** as barred by the one year statute of limitations.

d. Plaintiff's claims under Title 42 U.S.C. § 1988 are **DISMISSED** for failure to state a claim.

e. Plaintiff's State law claims are **DISMISSED** without prejudice.

f. The motion is otherwise **DENIED**.

3. Plaintiff's retaliation claims asserted under Title 42 U.S.C. §§ 1983 and 1985(2) against Commonwealth Defendant Vincent Mooney and inmate William Fulmer remain for trial.

4. A status conference will be held on **March 14, 2005** at **10:00 A.M.** in Courtroom 10-A. The Warden of SCI Huntingdon is directed to make plaintiff, Wilmer B. Gay, Inmate No. AF 2709, available via video for this conference

/s/ Norma L. Shapiro

Norma L. Shapiro, S.J.